Daniel I. Burk Enterprises, Inc., a California Corporation formerly named Sammons & Sons; Rapid Rack Industries, Inc. *and* General Warehousemen, Local 598, International Brotherhood of Teamsters, AFL–CIO. Cases 21–CA–28020 and 21–CA–28134

May 20, 1994

DECISION AND ORDER

BY MEMBERS STEPHENS, DEVANEY, AND BROWNING

On November 16, 1993, Administrative Law Judge George Christensen issued the attached decision. The Respondent Daniel I. Burk Enterprises, Inc., a California Corporation formerly named Sammons & Sons filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Daniel I. Burk Enterprises, Inc., a California Corporation formerly named Sammons & Sons, City of Industry, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] The Respondent argues, inter alia, that it cannot be ordered to provide any monetary relief to its former employees because it has filed a chapter 11 bankruptcy petition in the United States Bankruptcy Court for the Central District of California, automatically staying all legal proceedings against the Respondent. It is well settled, however, that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition, including ordering payment of backpay or other monetary relief. Board proceedings fall within 11 U.S.C. § 362(b)(4) and (5), the exception to the automatic stay provision for proceedings by a governmental unit to enforce its police or regulatory powers. *Phoenix Co.*, 274 NLRB 995 (1985).

Ami Silverman, Esq., for the General Counsel.
Stephen R. Kilstofte of Cayer (Kilstofte & Craton), of Long Beach, California, for Burk Enterprises/Sammons & Sons.
Donald R. Samuels and *Jonathan M. Brenner (Sidley & Austin)*, of Los Angeles, California, for Rapid Rack Industries.
John A. Siquieros (Wohlner, Kaplan, Phillips, Vogel & Young), of Encino, California, for Local 598.

DECISION

STATEMENT OF THE CASE

GEORGE CHRISTENSEN, Administrative Law Judge. On July 22, 1993, I conducted a hearing at Los Angeles, California, to try issues raised by a consolidated, amended complaint issued on April 29, 1993, based on charges filed by Local 598 of the International Brotherhood of Teamsters, AFL–CIO (Union) in Case 21–CA–28020 on April 22 and August 21, 1991, and in Case 21–CA–28134 on June 27 and August 21, 1991.

The complaint alleges and the answers thereto filed by Daniel I. Burk Enterprises, Inc./Sammons & Sons (BE & S&S) and Rapid Rack Industries, Inc. (RR) admit following the sale by S&S of much of its equipment, machinery, blueprints, inventory, customer and supplier lists and specifications, accounts and notes receivable, etc. to RR, S&S ceased operations, terminated its production and maintenance employees covered by a currently effective collective-bargaining agreement between S&S and the Union, RR moved the purchased equipment, machinery, blueprints, and inventory from the S&S plant to RR's plant in Mexicali, Mexico, moved the S&S customer and supplier lists to RR's California headquarters, began manufacturing the products formerly manufactured by S&S with RR's Mexicali work force, hired S&S' managers, engineers, and sales personnel, and began to sell the S&S products it was manufacturing to S&S' former customers (as well as customers developed by RR).[1]

The complaint further alleges and S&S/BE and RR denies the terms of the sales contract between S&S and RR gave RR sufficient control over the wages, hours, and working conditions of the employees covered by the S&S-union agreement to make S&S/BE and RR joint employers of S&S' production and maintenance employees between the date the sales contract was signed and the date S&S' production and maintenance employees were terminated; and thus the two employers, by failing to afford the Union adequate notice and an opportunity to bargain over the effects of S&S' cessation of business and termination of S&S' union-represented employees and S&S' failure to comply with the Union's posttermination request for information concerning the details of the sale and the amount and nature of payments made to the union-represented employees on their termination, violated Section 8(a)(l) and (5) of the National Labor Relations Act (Act).

The complaint also alleges and S&S/BE and RR denies Daniel I. Burk was an agent of S&S/BE; that the Union was a labor organization within the meaning of Section 2 of the Act; that the employee unit covered by the S&S-union agreement was appropriate for collective-bargaining purposes within the meaning of Section 9 of the Act; that the Union at times material was the duly designated exclusive collective-bargaining representative of the employees within that unit; and advanced affirmative defenses which will be detailed and determined below.

The issues created by the foregoing are whether:

1. At times material Daniel I. Burk was an agent of S&S/BE within the meaning of Section 2 of the Act.

[1] RR also purchased the exclusive right to the use of S&S' name, trademark, etc. For that reason, BE was created to retain title to S&S' remaining assets.

2. At times material the Union was a labor organization within the meaning of Section 2 of the Act.

3. At times material the employee unit described in the complaint was appropriate for collective-bargaining purposes within the meaning of Section 9 of the Act.

4. At times material the Union was the duly designated exclusive collective-bargaining representative of the employees within that unit.

5. At times material S&S/BE and RR were joint employers of the employees within that unit.

6. S&S/BE (and RR, if a joint employer) violated Section 8(a)(1) and (5) of the Act by:

a. Failing to provide the Union with adequate notice and an opportunity to bargain over the effects of S&S' ceasing operations and terminating its production and maintenance employees prior to such cessation and termination.

b. Failing to comply with the Union's request for information concerning the details of the sale and the amount and nature of payments made to S&S' union-represented employees on the termination of their employment.

7. If violations are found, whether one or more of the affirmative defenses advanced by S&S/BE or RR warrant a finding and conclusion S&S/BE (and RR, if a joint employer) did not violate the Act by such failures.

The General Counsel, the Union, S&S/BE, and RR appeared by counsel and were afforded full opportunity to adduce evidence, to examine and cross-examine witnesses, to argue, and to file briefs. The General Counsel, S&S/BE, and RR filed briefs.

Based on my review of the entire record, observation of the witnesses, perusal of the briefs and research, I enter the following

FINDINGS OF FACT[2]

I. JURISDICTION

The complaint alleged, S&S/BE and RR admitted, and I find at all material times S&S/BE and RR were employers engaged in commerce in a business affecting commerce within the meaning of Section 2 of the Act.

II. LABOR ORGANIZATION

At all times material the Union represented its members for the purpose of bargaining collectively on their behalf with their employers for the purpose of achieving wages, rates of pay, hours, and working conditions those employees desired; to secure collective-bargaining agreements reflecting those members' rates of pay, wages, hours, and working conditions; to assure employer compliance with the terms of those agreements, including the adjustment of employee/-member grievances over alleged employer violation of those terms; and the Union carried out those functions over many years in representing its members employed by S&S, including all times material.[3]

I therefore find and conclude at all pertinent times the Union was a labor organization within the meaning of Section 2 of the Act.

III. THE UNIT & THE UNION'S REPRESENTATIVE STATUS

For several years prior to S&S' ceasing operations and terminating its production and maintenance employees, Daniel I. Burk was the president of S&S/BE; bargained on behalf of S&S with the Union concerning the rates of pay, wages, hours, and working conditions of S&S' production and maintenance employees, including the adjustment of their grievances; executed a series of collective-bargaining agreements with the Union on behalf of S&S, including the last agreement for a term extending from October 1, 1988, through September 30, 1991.

At all pertinent times S&S recognized and dealt with the Union as the exclusive collective-bargaining representative of S&S' production and maintenance employees.[4]

The 1988–1991 S&S-union agreement (and, presumably, prior agreements) provided:

> Article I, Section l (a):
>
> The Employer recognizes and acknowledges that the Union affiliated with the International Brotherhood of Teamsters is the exclusive representative of all Production and Maintenance employees, Shipping and Receiving employees, Warehousemen, and Truck Driver employees for the purpose of collective bargaining as provided in the National Labor Relations Act.

At all material times S&S conducted its operations at 29ll Norton Avenue, Lynwood, California, and the wages, rates of pay, hours, and working conditions of all S&S employees employed therein in the classifications just described were governed by the terms of the successive agreements between S&S and the Union and the Union was recognized by S&S as the exclusive representative of those employees for collective-bargaining purposes.

On the basis of the foregoing, I find and conclude at all times material the following unit, as described in the complaint, was appropriate for collective-bargaining purposes within the meaning of Section 9 of the Act and that the Union was the duly designated exclusive collective-bargaining representative of all the employees within that unit, namely:

> All production and maintenance employees, shipping and receiving employees, warehousemen, and truck driver employees employed by S&S at 29ll Norton Avenue, Lynwood, California; excluding all other employees, office clerical employees, confidential employees, professional employees, guards and supervisors as defined in the Act.

[2] While every apparent or nonapparent conflict in the evidence has not been specifically resolved below, my findings are based on my examination of the entire record, my observation of the witnesses' demeanor while testifying, and my evaluation of the reliability of their testimony; therefore any testimony or other evidence in the record which is inconsistent with my findings is discredited.

[3] These findings are based on the undisputed testimony of Union Business Representative William Summers.

[4] These findings are based on the testimony of Daniel I. Burk, corroborated by Summers.

IV. DANIEL BURK'S STATUS

Daniel Burk became an S&S employee in about 1969 and subsequently its president. As noted above, he signed the 1988–1991 agreement between S&S and the Union on behalf of S&S and as president of S&S. His functions as president, among others, included, on behalf of S&S, the hire and fire of employees, disciplining employees, and engaging in collective bargaining on behalf of S&S with the Union concerning the wages, rates of pay, hours, and working conditions of S&S' production and maintenance employees.

On the basis of the foregoing, I find and conclude at all pertinent times Daniel Burk was an officer, supervisor, and agent of S&S acting on its behalf within the meaning of Section 2 of the Act.

V. THE ALLEGED JOINT EMPLOYER AND UNFAIR LABOR PRACTICES ISSUES

A. *Facts*

S&S, a closely held family corporation, commenced operations in the 1930s, manufacturing and selling heavy storage racks for industrial use.

By the 1980s S&S employed approximately 50 production and maintenance employees who, in and after 1973, were represented by the Union and covered by a succession of collective-bargaining agreements between S&S and the Union, including a final agreement for a term extending from October 1, 1988, through September 30, 1991.

By mid-1990, a general economic downturn caused about a 50-percent decline in S&S' sales, losses were mounting, and S&S was relying on constant draws on its line of credit at its bank to continue operations. S&S' accountant warned Daniel Burk in late 1990 S&S had to reduce its costs drastically to survive. By the end of the year S&S' losses mounted to over $600,000 and its unsecured debt rose to about $400,000.

In January 1991 Daniel Burk, convinced S&S could not reduce its costs and increase its income sufficiently to stay in business, contacted Gerald Bergman, the president and chairman of RR.[5]

Bergman expressed an interest in purchasing certain S&S assets, namely, S&S' inventory, including raw materials, work in progress, finished goods and supplies; fixtures, tooling, machinery, and equipment utilized to manufacture S&S' products; S&S' goodwill, tradenames, copyrights, customer specifications, customer lists, unfilled customer orders, and the S&S name; books and records relating to customer accounts, suppliers of goods and services, and related intangibles; and all accounts and notes receivable outstanding and unpaid. Bergman was also interested in employing S&S' managerial, sales, and engineering personnel. He disclaimed any interest, however, in employing S&S' production and maintenance employees, stating he intended to move the purchased assets utilized in manufacturing S&S' products to RR's Mexicali, Mexico plant for use in resuming the manufacture of S&S' products there by RR's production and maintenance employees in Mexico for sale under the S&S name to S&S' former customers, as well as any additional customers RR was able to develop. Bergman specifically stated RR did not wish to assume any of S&S' liabilities, including any obligations S&S had under its agreement with the Union or otherwise to S&S' production and maintenance employees.

Burk accepted Bergman's terms and the two agreed on the amount of money to be paid to S&S.

Bergman advised RR's counsel of the terms of the agreement between RR and S&S and instructed counsel to draft an asset purchase and sale contract reflecting the terms of the agreement.

Burk did not inform the Union of the impending sale following his reaching of agreement with Bergman concerning the sale and cessation of S&S' operations between the date he reached agreement concerning the terms of the sale and cessation (January) and the date he and Bergman executed an asset purchase and sale contract reflecting the terms of the agreement (March 21), though he had several contacts with union representatives between the two dates.

On March 21, 1991, Burk and Bergman signed an asset purchase and sale contract on behalf of S&S and RR which contained the following provisions:

> 1.06 *Liabilities and Assets not Included*. The parties hereto acknowledge that (i) RR is purchasing the assets of Sammons free of any and all liabilities, (ii) RR is not assuming any debts or obligations of Sammons of any nature . . . .
>
> 1.09 *Close of Escrow*. The closing of the purchase and sale through escrow shall occur on April 15, 1991 . . . .
>
> 1.11 *Retained Employees*. RR is not, as part of this transaction, agreeing to hire any of Sammons' employees, although nothing shall prevent RR from hiring any employee of Sammons who is an ''at will'' employee. In all events, Sammons shall be responsible for complying with all plant closing laws and undertakings, and for paying all severance pay, accrued vacation and sick leave, and accrued payroll. RR does not assume any obligation under, and shall have no duty to comply with, any collective bargaining agreement to which Sammons is a party.[6]
>
> 5.01 *Operations Prior to Closing*. Pending consummation of the sale and purchase described in this agreement, Sammons shall continue to operate said business in substantially the same manner as it has been operated in the past and shall:
>
> (d) Grant no increases in salary, pay, or other employment related benefits to any of its employees, or agents of said business without the written consent of RR, not to be unreasonably withheld.[7]

[5] Bergman previously contacted Burk to discuss a possible sale of S&S to RR, or a merger. At that time Burk told Bergman that S&S was not interested.

[6] Bergman was aware S&S' production and maintenance employees were covered by a collective-bargaining agreement at the time the terms of the purchase and sale terms were negotiated; as noted, Bergman specified RR would not assume any obligation under that agreement nor to S&S' employees, only wishing to reserve to RR the right to offer employment to S&S' managerial, engineering, and sales employees (i.e., what he considered ''at will'' employees).

[7] Bergman explained he instructed RR's counsel to so require because, as he told Burk during the negotiations, RR intended to offer employment to S&S' management, engineering, and sales personnel

Continued

(e) Enter into no contract or transactions, except in the ordinary course of business, on account of said business without the written consent of RR.

The Escrow Closed on April 15, 1991

During the 22 days between the date Burk and Bergman signed the purchase and sale agreement (March 21, 1991) and the date the escrow closed (April 15, 1991), S&S made no changes in the pay and benefit levels of any of S&S' employees. During the same period, S&S did not enter into any contracts or transactions other than those entered into in the ordinary course of business (raw materials purchases, product sales).

Neither Burk nor any other representative or agent of S&S notified the Union or the S&S employees represented by the Union of the impending sale of S&S' assets and cessation of business between March 21 and April 10, when Burk met with S&S' union-represented employees.

On Wednesday, April 10, 1991, Daniel Burk called a meeting of all production and maintenance employees in the plant during the workshift. He told the employees S&S' bank had called its note securing its line of credit, S&S was out of funds, business had dropped drastically, and without sufficient money or orders to enable S&S to continue in business, S&S was going to cease operations on Friday, April 12, 1991—unless some miracle intervened.

This was the first notice the employees received of S&S' plan to cease operations.

Ernest Medina, an S&S production and maintenance employee who had been designated as the Union's job steward, telephoned the Union's office and requested that Summers come to the plant.[8] The message was relayed to Summers, he arrived at the plant a few hours later and met with Medina and several other union-represented employees. Medina and the employees informed Summers what Burk told them and asked him to find out what was going to happen to them.

Summers tried but was unable to contact Burk, and left a message at S&S' office requesting that Burk contact him. Burk telephoned the union office the next day but did not make contact with Summers.

Paychecks were normally distributed by supervisors on the shop floor at about 10:30 a.m. The checks were not distributed at the normal time on Friday, April 12, but were distributed at a later time by Daniel Burk and S&S Vice President John Moreno. The two toured the plant floor, contacted each employee individually, and told each employee this was the last day the plant was going to be in operation, shook each employee's hand, and presented each employee with his final paycheck. In response to a question concerning what was going to happen to the plant, Burk responded everything was going to be sold.

At the time Burk contacted Medina, he told Medina to go to Moreno's office later, Moreno had something to tell him. Medina went to Moreno's office later that day. Moreno told Medina there was some work for him the following week. Medina contacted Summers and reported what had transpired; Summers advised Union Secretary-Treasurer Joe Campbell.

Burk did not recall whether he talked to Summers on Friday, April 12, and Summers asked him to talk to Campbell, but recalled he did speak to Campbell and tell Campbell that ''after 62 years, the Company had closed.'' This was the first time S&S advised the Union of the closure.

Medina reported for work on Monday, April 15, 1991. Edward Morton of the maintenance department instructed him to dismantle, clean, and pack machinery and equipment in the plant used to manufacture S&S' racks, it had been sold. The packed machinery and equipment was shipped to RR at Mexicali, Mexico. The lists, books, and records purchased by RR were shipped to RR's California headquarters. During the week of April 15, 1991, Medina also packed and shipped finished products to the S&S customers who had ordered those products. Medina worked out the week and was not further employed. RR did not offer him any employment, though the two S&S production/maintenance employees who worked alongside Medina that week (Morton and Louis Knox) were employed by RR.

Following the shipment to Mexicali, the following equipment and machinery remained in or at the S&S facility: seven overhead hoists, two paint lines, two paint booths, one bake oven, one dry-off oven, one wash unit, and one vehicle.

On April 15, 1991, the Union received formal notification from counsel for S&S that S&S ceased operations on April 12, 1991, all employees represented by the Union were terminated on that date and the October 1, 1988–September 30, 1991 agreement between S&S and the Union was also terminated. S&S' counsel enclosed a copy of a notice dated April 12, 1991, signed by Daniel Burk and addressed to all employees purporting to notify each employee S&S had agreed to sell substantially all its business assets to RR, S&S was ceasing operations on April 12, 1991, and that each employee was receiving a final paycheck covering all his accrued wages, vacation benefits, and sick leave, prorated through April 12, 1991.[9]

There is no evidence of record during the 22-day period between the date S&S and RR signed the purchase and sale contract and the date S&S' union-represented employees were terminated, any RR officer, representative, agent, or employee hired, fired, disciplined, terminated, paid, or directed the work of any S&S union-represented employee.

Burk set the date S&S ceased operations and notified S&S' union-represented employees of their termination without consulting RR; Burk decided the amount each terminated employee was paid and what that final payment covered without consulting RR.

At all pertinent times S&S/BE and RR were separately owned corporations, separately managed, separately financed, and conducted operations at different locations with different work forces. There were no interrelated operations, no employee exchanges between them, and the negotiations between S&S/BE and RR which led to the purchase and sales contract between them was negotiated at arm's length.

at their current S&S pay and benefit levels and wanted to avoid any increases therein prior to closure of the transaction.

[8] Summers was assigned by the Union to provide services to the S&S employees represented by the Union.

[9] Burk conceded, however, the purported notice was not given to the employees when they received their final paychecks at the plant on April 12, 1991, and stated he did not know whether, when and how the purported notice was delivered to the employees.

On April 22, 1991, Campbell addressed a letter to S&S' counsel which requested that the Union be furnished:

1. A full copy of the purchase and sales contract between S&S and RR; and

2. A seniority list as of April 11, 1991, showing the names, addresses, telephone numbers, seniority dates, and final amounts paid to each employee within the employee unit covered by the 1988–1991 collective-bargaining agreement between S&S and the Union.

On April 24, 1991, counsel for S&S responded with a letter stating the Union was only entitled to information which was necessary and relevant to contract negotiations; the information Campbell requested neither was necessary nor relevant for collective-bargaining purposes, inasmuch as S&S had ceased operations and there was nothing to negotiate; and failed to tender the requested information.

Following the April 12, 1991 cessation of S&S' operations, S&S managerial, engineering, and sales personnel, Daniel Burk, John Moreno, Buddy Burk, John Beech, Robert Icola, and Anthony Hart were hired by RR, as were S&S production/maintenance employees Morgan and Knox.

On May 7, 1991, Daniel Burk formed BE and took title in that name to S&S' remaining assets.

On October 1, 1991, BE filed a voluntary petition in bankruptcy under Chapter 11 of the Bankruptcy Code and became the debtor-in-possession.

During the proceeding a copy of the March 21, 1991 purchase and sale contract between S&S and RR was introduced into evidence, though it failed to include several attachments referred to in the body of the contract. A list dated April 14, 1991, and prepared by Daniel Burk from S&S records was also introduced which named the union-represented S&S employees on S&S' active payroll on April 12. The names of 34 employees were identified as full-time S&S production and maintenance employees, along with their hiring dates, including one employee on vacation at that time and five employees on medical leave. The names and hiring dates of five part-time production and maintenance employees were also listed. The document, however, did not include the addresses or telephone numbers of the employees, nor a description of the final payment made to each employee and what the payment covered.

B. *The Joint Employer Issue*

Counsel for the General Counsel and for the Union contend at times material (during the 22 days between the date S&S and RR signed the purchase and sale contract and the date S&S ceased operations and terminated its union-represented employees) S&S/BE and RR were joint employers of S&S' union-represented employees.

The National Labor Relations Board (Board) has stated:

> The joint employer concept recognizes that two or more business entities are in fact separate but that they share or codetermine those matters governing the essential terms or conditions of employment. Whether an employer possesses sufficient indicia of control over employees employed by another employer is essentially a factual issue. To establish joint employer status there must be a showing that the employer meaningfully affects matters relating to the employment relationship such as hiring, firing, discipline, supervision, and direction.[10]

In *Clinton's Ditch Cooperative v. NLRB*, 778 F.2d 132, 138 (2d Cir. 1985), cert. denied 107 S.Ct. 67 (1986), the Second Circuit Court of Appeals spelled out five indicia to be considered in determining whether an employer had sufficient control over the employees of another employer to support a finding and conclusion the former employer was a joint employer of the latter employer's employees:

1. Hiring and firing.
2. Discipline.
3. Pay, insurance and records.
4. Supervision.
5. Participation in collective bargaining process.

During the 22 days between the date S&S and RR signed the purchase and sale contract and the date S&S ceased operations and terminated its union-represented employees, there is no evidence RR hired, fired, disciplined, paid, and maintained insurance and other records for or supervised S&S' union-represented employees; nor is there any evidence RR participated in any collective bargaining concerning S&S' union-represented employees. In fact, in the purchase and sale contract RR specified it would not assume any of S&S' collective-bargaining obligations or any obligation to S&S' union-represented employees.

It is reasonable to presume the General Counsel and the Union failed to produce any evidence RR hired, fired, disciplined, paid, maintained insurance and other records for or supervised S&S' union-represented employees during the period noted above because no such evidence existed or exists. This view is further fortified by the General Counsel's and the Union's reliance in their briefs and argument solely on the language of sections 501(d) and (e) of the asset purchase and sale contract (quoted above) as the only evidence of record establishing RR was a joint employer of S&S' union-represented employees during the 22-day period.

Their reliance on that contract language is misplaced.

In *Sun Refining & Marketing Co. v. Building Trades Council of Philadelphia*, 117 LRRM 2127 (D.C.Pa. 1984), Sun contracted with a nonunion insulating company to perform work at the refinery. The contract between Sun and the insulator provided the insulator would not enter into any collective-bargaining agreement with any labor organization that increased the rates of pay or the hours of work of the insulator's employees without obtaining Sun's approval. The court held this an insufficient basis for a joint employer finding, inasmuch as the insulator's employees were hired, fired, supervised, paid, and directed by the insulator, Sun and the insulator were separate business entities, and the contract between them was negotiated at arm's length. To similar effect, *Teamsters Local 773 v. Cotter & Co.*, 128 LRRM 3198 (D.C.E.Pa. 1988).

In numerous cases, the Board and reviewing courts have reached a similar conclusion, holding where two employers are not commonly owned, managed, do not share financial control, facilities, officers, supervisors, plants, offices or work forces, and the former employer does not exercise di-

[10] *Laerco Transportation & Warehouse*, 269 NLRB 324, 325 (1984).

rection or control over the hire, fire, discipline, pay, supervision, or direction of the work performed by employees of the latter employer, nor does the former employer participate in collective bargaining between the latter employer and the union representing its employees, the former employer is not a joint employer of the latter employer's employees.[11]

S&S/BE and RR at all material times were separate business entities; there is no evidence at any time RR exercised any control over the hire, fire, discipline, pay, employee recordkeeping, or direction of the work of S&S' union-represented employees, including the 22-day period between the date S&S and RR executed the purchase and sale contract and the date S&S ceased operations and terminated its union-represented employees; and there is no evidence RR participated in any collective bargaining over the wages, of S&S' union-represented employees. Thus the ''stand still'' provisions of the S&S-RR purchase and sales contract fall far short of establishing RR ''meaningfully affected'' the terms of employment of S&S' union-represented employees.

I therefore find and conclude the General Counsel and the Union failed to establish at any material time RR was a joint employer of S&S' union-represented employees.

C. *The Alleged 8(a)(5) Violations*

1. Union notice and bargaining opportunity

The complaint alleged S&S/BE violated Section 8(a)(5) and (1) of the Act by failing to give the Union timely notice of, and an opportunity to bargain, over the effects of its planned cessation of operation and termination of its union-represented employees.

In 1981 the Supreme Court established the principle a union representing the employees of an employer who plans to cease operations and terminate its union-represented employees is entitled to ''a significant opportunity to bargain . . . in a meaningful manner and at a meaningful time'' over the effects of the employer's decision to cease operations and terminate its union-represented employees.[12]

Applying the principle, the First Circuit Court has ruled ''meaningful bargaining'' means ''timely notice to the union'' of the planned closure and termination.[13]

The court went on to find the 1-day notice given the union in that case inadequate; in similar fashion the Seventh Circuit Court has ruled a 3-day notice is inadequate (*NLRB v. Emsing's Supermarket*, 872 F.2d 1279 (1989)); and the Third Circuit has ruled when the union is presented with a fait accompli, there is a complete failure to comply with the notice requirement *(NLRB v. National Car Rental Systems*, 672 F.2d 1182 (3d Cir. 1982). To similar effect, *NLRB v. St. Mary's Foundry Co*., 860 F.2d 679 (6th Cir. 1988); *P. J. Hamill Transfer Co*., 277 NLRB 462 (1985); *Metropolitan Teletronics*, 279 NLRB 957 (1986); *Signal Communications*, 284 NLRB 423 (1987); *John R. Cowley & Bros*., 297 NLRB 770 (1990); *Los Angeles Soap Co*., 300 NLRB 289 (1990); *Willamette Tug & Barge Co*., 300 NLRB 282 (1990).

Compliance with the preimplementation notice requirement has been excused only in cases of emergency, such as the sudden refusal of the employer's bank to continue extending credit (*Raskin Packing Co*., 246 NLRB 78 (1979)); the unanticipated denial of an employer's loan request (*M & M Transportation Co*., 239 NLRB 73 (1978)); a bankruptcy trustee's closure of a business and termination of employees on learning serious mismanagement by management existed and there were no employees working at the plant (*Yorke, Trustee v. NLRB*, 709 F.2d 1138 (7th Cir. 1983)).

This case presents no ''emergency'' situation; S&S was aware in the fall of 1990 it was in dire straits; received final confirmation of that fact in early 1991; realized it was going to have to cease operations and in early 1991 negotiated a purchase and sale contract with RR which meant the cessation of all operations at its California facility and the termination of its employees; and continued to operate through April 12.

S&S thus had ample opportunity, between the time it decided to cease operations and the time it did so, to notify the Union of its decision and to provide the Union with an opportunity to bargain over the effects of that decision on the employees.

In this case the Union did not receive formal notice of S&S' April 12 cessation of operations, S&S' termination of its union-represented employees, and S&S' termination of its current collective-bargaining agreement with the Union until April 15, 3 days after the closure, long after S&S realized and decided it could not continue in business; and subsequent to the time S&S sold its business assets and terminated its work force.

Even presuming arguendo the informal communication to the union steward on April 10 and the informal communication to the union secretary-treasurer on April 12 constituted S&S notice to the Union that S&S was ceasing operations and terminating the employees on April 12, those notices clearly failed to afford the Union an opportunity to bargain over the effects on the union-represented employees of the cessation and termination at a time the Union still had some bargaining power.

S&S' contention it concealed its intentions from the Union and the affected employees in order to keep them employed as long as possible is not a valid defense. It is just as reasonable to conclude S&S' admitted (by Daniel Burk) concealment of its negotiated sale of its business, planned cessation of operations, and termination of its union-represented employees from the Union and its employees between the time it decided to sell its business and terminate its work force in order the maximize S&S' income during the period in question and prevent the Union, with an earlier notice when it had more bargaining power, from offering concessions enabling S&S to continue operations and/or requesting concessions to cushion the effects of their terminations on the employees, such as severance pay.

S&S' counsel complains the Union failed to request bargaining following its April 15 receipt of formal notice of the cessation of S&S' operations, termination of its union-represented employees, and termination of the S&S-union agreement.

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[11] *Dextra Industries*, 273 NLRB 1660 (1985); *Chesapeake Foods*, 287 NLRB 405 (1987); *So. Cal. Gas Co*., 302 NLRB 456 (1991); *G. Wes Ltd*., 309 NLRB 225 (1992); *Cabot Corp*., 223 NLRB 1388 (1976), enfd. 561 F.2d 253 (D.C. Cir. 1977); *TLI Inc*., 271 NLRB 798 (1984), affd. 772 F.2d 896 (3d Cir. 1985); *Island Creek Coal Co*., 279 NLRB 858 (1986).

[12] *First National Maintenance Corp. v. NLRB*, 452 U.S. 666 at 681–682 (1981).

[13] *Penntech Papers v. NLRB*, 706 F.2d 18, 26 (1st Cir. 1983).

Where the cessation and terminations have been decided on and implemented at the time the Union received notice thereof, the Union has no duty to request bargaining over the effects on the terminated employees it represents.[14]

In any event, the Union did request and S&S refused to bargain when, in response to the Union's April 22 letter request for information concerning the amounts paid to each of the employees it represented when they were terminated and statement it wished to bargain with S&S on receipt of that information, S&S' counsel refused to supply the requested information and to bargain, stating there was ''nothing to negotiate.''

On the basis of the foregoing, I find and conclude S&S/BE violated Section 8(a)(1) and (5) of the Act by failing to provide the Union timely notice of, and an opportunity to bargain over, the effects of its April 12, 1991 cessation of operations and termination of its union-represented employees prior to the implementation of its decision to cease operations and terminate those employees.

2. Failure to provide information

In 1967, the Supreme Court stated where there was a ''probability that the desired information (a union sought from an employer whose employees it represented) was relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities,'' the employer was obligated to furnish the requested information and violated Section 8(a)(5) of the Act by failing or refusing to supply the requested information.[15]

In a number of subsequent cases, the Board and reviewing courts have held an employer who has sold its assets or business to another employer and ceased operations has violated the Act by failing or refusing to provide the union representing its employees with a copy of the contract of sale between the employer and the asset purchaser. Those decisions were grounded on the premise the requested information would enable the union to determine if the employer and the purchaser were a single employer or the purchaser was the alter ego or successor of the employer, to aid the union in deciding whether to file an appropriate action against the employer.[16]

The Board and reviewing courts have also held when a union requests wage data from an employer whose employees the union represents, that information is ''presumptively relevant,'' since it is ''intrinsic to the core of the employer-employee relationship.''[17]

In its April 22 letter to S&S' counsel, the Union pointed out article II, section 1 of its unexpired agreement with S&S provided:

> This Agreement and any supplemental agreements hereto . . . shall be binding upon the parties hereto, their successors, administrators, executors and assigns. In the event an entire operation is taken over by sale, transfer, lease, assignment, receivership or bankruptcy proceeding, such operation shall continue to be subject to the terms and conditions of this Agreement for the life thereof. The Employer shall give notice of the existence of this Agreement to any purchaser or transferee, lessee, assignee, etc. of the operations covered by this Agreement or any part thereof. Such notice shall be in writing with a copy to the Union, at the time the seller, transferor or lessor executes a contract or transaction as herein described. The Union shall also be advised of the exact nature of the transaction, not including financial details.

The Union advised S&S' counsel in the April 22 letter it sought a copy of the purchase and sale agreement between S&S and RR, omitting financial details if S&S so desired, because the Union believed RR was a ''successor'' to S&S and bound under the agreement provision just cited to employ S&S' employees covered by the agreement to continue manufacturing S&S' products and, in the event S&S failed to so provide in its sales contract with RR, as well as by failing to provide the Union with a copy of the sales contract and by failing to advise the Union of the exact nature of the transaction between S&S and RR, S&S had breached section 1 of article 2 of the S&S-union agreement and that it sought the information in question to support a grievance so alleging.

In the same letter, the Union requested a current seniority list showing names, addresses, telephone numbers, seniority dates, and final amounts paid to the S&S employees it represented. It is clear the Union could not determine whether the final payments tendered to the employees by S&S: (1) included payments at the rates set out in the agreement for all hours worked by each employee during the final pay period, nor (2) included payments for any and all benefits accrued under the agreement based on length of service (such as vacations) without the latter information, and could not determine if all bargaining unit employees had been properly compensated without the names, addresses, telephone numbers, and seniority dates requested.

I find the information sought by the Union was relevant and necessary to its performance of its statutory duty, representing S&S' production and maintenance employees.[18]

I therefore conclude S&S/BE violated Section 8(a)(1) and (5) of the Act by failing to provide the requested information in a timely manner.

3. The affirmative defenses

In their answers to the complaint, S&S/BE and RR asserted numerous affirmative defenses, as well as denying most of the complaint allegations. Summarizing the affirma-

[14] *John R. Cowley & Bros.*, supra at 771; *NLRB v. National Car Rental System*, supra; *Perrella Gloves*, 304 NLRB 489 (1991); *Chrissy Sportswear*, 304 NLRB 988 (1991).

[15] *NLRB v. Acme Industries Co.*, 385 U.S. 432, 437 (1967); also see *Detroit Edison Co. v. NLRB*, 440 U.S. 301 (1979), and *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956).

[16] *St. Mary's Foundry*, 284 NLRB 221 (1987), enfd. 860 F.2d 679 (6th Cir. 1988); *Barnard Engineering Co.*, 282 NLRB 617 (1987); *Knappton Maritime Corp.*, 292 NLRB 236 (1988); *NLRB v. New England Newspapers*, 856 F.2d 409 (1st Cir. 1988); *Mary Thompson Hospital v. NLRB*, 943 F.2d 741 (7th Cir. 1991); *Chun Cha Fu, Inc.*, 305 NLRB 143 (1991).

[17] *San Diego Newspaper Guild Local 95 v. NLRB*, 548 F.2d 863 (9th Cir. 1977), and cases cited therein; *Leland Stanford University*, 262 NLRB 136, 139 (1982); *Jakel Motors*, 292 NLRB No. 58 (Jan. 18, 1989) (not published in Board volumes).

[18] *EPE, Inc.*, 284 NLRB 191 (1987).

tive defenses, they alleged the complaint should be dismissed because:

1. The complaint failed to state a cause of action.
2. The S&S-union agreement authorized S&S to cease operations.
3. Federal case law permitted S&S to cease operations.
4. The Union waived and/or is estopped from filing charges alleging S&S' cessation of operations and employee terminations violated the Act.
5. S&S' concealment from its employees and the Union of its plan to cease operations and terminate its employees until implementation was imminent benefited the employees.
6. S&S' concealment from its employees and the Union of its plan to cease operations and terminate its employees until implementation was imminent mitigated any damages the employees suffered by affording them the opportunity to earn wages they would not have received, had S&S ceased operations sooner.
7. S&S performed all its obligations under the S&S-union agreement, including payment of accrued vacation, sick time, and other payments required under the agreement and California labor law.
8. The facts which formed the basis for the Union's grievance alleging S&S violated the S&S-union agreement in ceasing operations and terminating its employees are sufficiently similar to the facts underlying the unfair labor practice allegations of the complaint to warrant Board deferral to the agreement's grievance/arbitration provisions for resolution of the dispute.
9. The automatic stay provisions of the Federal bankruptcy statute requires the Board refrain from issuing any decision in this case at this time.
10. The complaint is time-barred under Section 10(b) of the Act.
11. RR is not liable for any acts or omissions of S&S.[19]
12. There should be no recovery in this case by the employees because the Union failed to mitigate damages.
13. Any relief in this case is barred under the doctrines of res judicata and collateral estoppel.

Neither S&S/BE nor RR specifically addressed these contentions in their posthearing briefs nor supplied supporting authority (other than RR's defense against the complaint allegation it was a joint employer of S&S' employees).

a. *Failure to state a cause of action*

The complaint set forth factual allegations supporting the charge S&S/BE violated the Act by failing to timely notify and provide the Union an adequate opportunity to bargain over the effects on the employees of its plan to cease operations and terminate the employees, as well as factual allegations supporting the charge S&S/BE, by failing to provide requested information enabling the Union to ascertain facts supporting its theory of agreement and Act violation. The complaint also set forth sufficient facts to warrant determining on its merits the issue of whether RR exercised sufficient control over S&S' employees to warrant assessing joint employer liability against RR for S&S' failure to provide the Union adequate notice, an opportunity to bargain and union-requested information. Thus the contention the complaint failed to state facts sufficient to constitute a cause of action is rejected.

b. *Agreement authorization and Federal law condonation of S&S' cessation of operations and employee terminations*

Assuming arguendo the S&S-union agreement authorized S&S to cease operations and conceding S&S did not violate the Act by ceasing operations, these factors are irrelevant to the major issue raised by the complaint, i.e., whether S&S/BE violated the Act by failing to give the Union timely notice and an opportunity to bargain over the effects of the cessation on the employees prior to implementation. This contention lacks merit and is rejected.

c. *Union waiver and/or estoppel*

The fact the S&S-union current and past agreements contemplated layoffs during economic downturns and such layoffs occurred during the term of those agreements is likewise irrelevant to the issue of whether S&S/BE was obligated under the Act to provide timely notice and an opportunity to bargain over the effects on its employees of a complete cessation of operations. This contention also is rejected.

Nor does the fact the Union filed a grievance under the S&S-union agreement over the cessation of operations and terminations preclude the Union from filing unfair labor practices over that cessation and terminations. The resort to a private forum where no determination of statutory rights could or was determined does not preclude the Union from vindicating public rights under the statute.[20]

d. *S&S acted in the employees' best interests*

The contention S&S was acting in the best interests of the employees in concealing its plan to cease operations and terminate them until immediately prior to implementation of the plan and therefore should not be held to any liability for its failure to timely notify the Union of its plan does not warrant serious consideration. The statutory requirement of timely union notice is imposed to enable a union to bargain over the effects of a cessation on affected employees at a time the union, if afforded an opportunity to bargain, might be able to offer concessions enabling the employer to continue operations and/or afford the union an opportunity to seek and secure concessions cushioning the effects of the terminations on the affected employees (such as securing severance pay based on length of service).

In this case, S&S/BE received material benefits by continuing operations following its decision to cease operations and sale thereof, so its claimed altruism is highly questionable. This contention is rejected.

S&S' contention it concealed its plan to cease business to mitigate the damage to its employees also fails, on the grounds set out above.

e. *Alleged performance of the agreement*

Presuming arguendo S&S made all and any payments to the union-represented employees required by the S&S-union

[19] This was a repeat of RR's denial in its answer to the allegations in the complaint stating RR was a joint employer of S&S' employees and jointly liable for S&S' violations of the Act. This issue has been resolved and will not be considered below.

[20] *Buck Brown Contracting Co.*, 272 NLRB 951 (1984).

agreement and California labor law,[21] this is irrelevant to the issue of whether S&S/BE performed its statutory obligation to afford the Union timely notice and an opportunity to bargain over the effects of the cessation of operations prior to implementation and to provide the Union information enabling the Union to perform its statutory obligations in representing the affected employees. This contention is rejected.

f. *The Collyer issue*

Exercising its discretionary powers, the Board decided in 1971 when a dispute between an employer and the union was resolvable either by the Board in an unfair labor practice proceeding or an arbitration pursuant to the terms of a collective-bargaining agreement between the employer and the union and the two submitted the dispute to an arbitrator, the Board would defer to the agreement the parties had made (so long as they did proceed to arbitration and the proceeding was fair and equitable).[22]

However, the Board has consistently refused to defer a dispute wherein a complaint was issued on the basis of a union charge an employer violated Section 8(a)(1) and (5) of the Act by failing or refusing to supply the union information necessary and relevant to the union's performance of its statutory duties as the collective-bargaining representative of the employer's employees,[23] when a complaint alleged an employer who ceased operations failed to bargain over the cessation, substantial time had passed, and it would be a waste of resources and only delay disposition of the dispute to defer[24] and when an arbitrator lacked jurisdiction to bring before him or order relief against a third party purchaser of the employer's assets.[25]

These factors are all present here; an arbitrator considering the grievance filed by the Union against S&S/BE under the grievance/arbitration provisions of the S&S-union agreement would not be able to consider and rule on the Union's contention S&S/BE violated Section 8(a)(1) and (5) of the Act by failing to furnish the Union the wage data it requested following S&S' cessation of operations; that arbitrator would not have any power to join RR to the dispute, determine whether RR was a joint employer of S&S/BE's employees, nor issue any directives or orders against RR; and substantial time has passed and it would appear to be a waste of resources and delay disposition of the dispute to now defer determination on those issues raised by the Union's grievance to an arbitrator for disposition.

I therefore reject the contention the Board should defer disposing of the merits of the issues raised by the complaint issued in this case to an arbitrator designated pursuant to the grievance/arbitration provisions of the S&S-union agreement.

g. *Stay of action due to bankruptcy*

The Board has noted in several cases:

> It is well settled that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction to process unfair labor practice cases.[26]

Thus the Board regularly processes and decides on their merits complaints alleging a bankrupt employer either prior to or during bankruptcy has committed unfair labor practices.

I therefore reject this affirmative defense.

h. *The 10(b) defense*

Section 10(b) of the Act bars the Board from considering on its merits a complaint based on a charge filed more than 6 months after the date an alleged unfair labor practice was committed.

The original charge in Case 21–CA–28020 alleging S&S violated the Act by failing to give the Union timely notice of and an opportunity to bargain concerning S&S' cessation of operations and termination of its employees was filed on April 22, 1991, 10 days after the Union received formal notice of the cessation and layoffs. Even assuming arguendo the April 10, 1991 notice to the employees was valid notice to the Union, the charge was filed 12 days after the cessation and layoffs.

The amended charge in Case 21–CA–28020 adding BE and RR as named violators was filed on August 21, 1991, less than 5 months after the cessation and terminations.

The original charge in Case 21–CA–28l34 alleging S&S and RR violated the Act by failing to furnish wage and related data requested by the Union was filed on June 27, 1991, less than 3 months after the date S&S failed and refused to supply the wage and related data requested.

The amended charge in Case 21–CA–28l34 adding BE as a named violator was filed on August 21, 1991, less than 5 months after the cessation and terminations.

Thus the Union charges that S&S/BE and RR violated the Act by failing to provide adequate and timely notice to the Union of the cessation of operations and terminations and a union opportunity to bargain, as well as union charges S&S/BE and RR violated the Act by failing to provide the Union requested wage and related data enabling the Union to discharge its statutory functions were filed and served on S&S/BE and RR less than 6 months after the date the Union learned of the cessation of operations and terminations and received a refusal to supply the requested information.

I therefore reject the affirmative defense based on Section 10(b) of the Act.

i. *Alleged union failure to mitigate damages*

While S&S/BE and RR failed to advance any argument or cite authorities supporting this contention, apparently they contend the Union failed to seek bargaining in a sufficiently aggressive manner following the belated receipt of notice of the cessation of operations and terminations, barring the affected employees from any relief under the Act.

When timely union notice of a cessation and termination is not provided, the union has no duty to actively pursue bar-

[21] That question is undetermined, in view of S&S' failure to supply the Union with a breakdown of the amounts paid to each terminated employee, for what purposes, and how calculated.

[22] *Collyer Insulated Wire*, 192 NLRB 837 (1971).

[23] *Postal Service*, 307 NLRB 1105, 1108 (1992).

[24] *St. Louis Gateway Hotel*, 286 NLRB 863 (1987).

[25] *Masters, Mates & Pilots (Seatrain Lines)*, 220 NLRB 164 (1975).

[26] *Days Hotel of Southfield*, 311 NLRB 856 fn. 3 (1993); *Frayn Printing*, 308 NLRB No. 45 fn. 1 (Aug. 12, 1992) (not reported in Board volumes); *FJN Mfg.*, 305 NLRB 656, 657 fn. 8 (1991).

gaining, in view of the futility of such pursuit following cessation and termination.[27]

The union notice in this case was untimely and, in any event, the Union pursued a grievance and was thwarted in its effort to process that grievance, a bargaining effort, by S&S/BE's refusal to supply necessary and relevant information.

I therefore reject this affirmative defense.

10. The res judicata and collateral estoppel defenses

Again S&S/BE and RR failed to develop any argument or cite any authorities in support of this affirmative defense.

I have cited case law supporting my findings and conclusions S&S/BE violated the Act by failing to provide the Union with timely notice of its planned cessation of operations and termination of its union-represented employees and rejected the affirmative estoppel defense above.

I therefore reject this affirmative defense.

Conclusion

In view of the foregoing, I find and conclude the affirmative defenses advances by S&S/BE and RR do not warrant findings and conclusions S&S/BE did not violate the Act by its failure to provide the Union timely notice of its planned cessation of operations and termination of its union-represented employees prior to implementation thereof and its failure and refusal to supply information requested by the Union which was necessary and relevant to the Union's performance of its statutory obligations on behalf of the employees it represented.

Conclusions of Law

1. At all pertinent times S&S/BE and RR were employers engaged in commerce in business affecting commerce within the meaning of Section 2 of the Act.

2. At all pertinent times Daniel I. Burk was a supervisor and agent of S&S/BE acting on their behalf within the meaning of Section 2 of the Act.

3. At all pertinent times the Union was a labor organization within the meaning of Section 2 of the Act.

4. At all pertinent times the following employee unit was appropriate for bargaining purposes within the meaning of Section 9 of the Act:

> All production and maintenance employees, shipping and receiving employees, warehousemen and truck-driver employees employed by S&S/BE at the facility located at 2911 Norton Avenue, Lynwood, California; excluding all other employees, office clerical employees, confidential employees, professional employees, guards and supervisors as defined in the Act.

5. At all pertinent times the Union was the duly designated exclusive collective-bargaining representative of the employees in the aforesaid unit.

6. RR is not and has not at any pertinent time been a joint employer of S&S/BE's employees within the aforesaid unit.

7. S&S/BE violated Section 8(a)(1) and (5) of the Act by:

a. Failing to provide the Union adequate and timely notice of its planned cessation of operations and termination of its employees within the unit and an opportunity to bargain with respect to the effects thereof on those employees prior to its April 12, 1991 implementation of its planned cessation and terminations.

b. Failing and refusing to provide the Union with necessary and relevant information requested by the Union on April 22, 1991, to aid the Union in the performance of its statutory duties on behalf of the unit employees.

8. RR did not violate the Act.

9. The aforesaid violations affected and affects interstate commerce within the meaning of Section 2 of the Act.

The Remedy

Having found S&S/BE engaged in unfair labor practices in violation of Section 8(a)(1) and (5) of the Act, I recommend S&S/BE be ordered to cease and desist therefrom and to take certain affirmative actions designed to effectuate the purposes of the Act.

As a result of S&S/BE's unlawful failure to provide the Union with notice of its planned cessation of operations and termination of its union-represented employees at a time when the Union had an adequate opportunity and sufficient power to bargain effectively over the effects thereof on the employees it represented, I recommend S&S/BE be ordered to comply with the remedies set forth in *Transmarine Navigation Corp*., 170 NLRB 389 (1968). I therefore recommend S&S/BE be ordered to pay to each of the employees on the S&S/BE's active payroll on April 12, 1991, backpay at the rate of their normal wages on that date from 5 days after the date the Board issues its Order in this case until the occurrence of the earliest of the following conditions: (1) the date S&S/BE bargains to agreement with the Union concerning the effects of the cessation of operations on its union-represented employees; (2) a bona fide impasse in bargaining; (3) the failure of the Union to request bargaining within 5 days of the issuance of the Board's Order, or to commence negotiations within 5 days of S&S/BE's notice of desire to bargain with the Union; or (4) the subsequent failure of the Union to bargain in good faith; but in no event shall the sum paid to the employees exceed the amount he or she would have earned as wages from April 12, 1991, the date S&S/BE ceased operations, to the time he or she secured equivalent employment elsewhere, or the date on which S&S/BE should have offered to bargain, whichever occurs sooner; provided, however, that in no event shall this sum be less than the employees would have earned for a 2-week period at the normal rate of their normal wages when last in S&S/BE's employ. Interest on all such sums shall be paid in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

[27] *John R. Cowley*, supra; *National Car Rental Systems*, supra, 672 F.2d at 1187–1189; *Los Angeles Soap Co*., supra; *Chrissy Sportswear*, supra.

I also recommend S&S/BE be ordered to furnish the Union with a complete copy of the purchase and sale agreement between S&S and RR, including all attachments, the addresses and telephone numbers of each of the union-represented employees in S&S/BE's employ on April 12, 1991, to the extent available, the total amount paid to each such employee on his termination, and a breakdown of the composition of the final paycheck into the components covered thereby.

Since S&S/BE has ceased operations, I further recommend S&S/BE be ordered to mail signed copies of the attached notice to the Union and to all the unit employees employed on April 12, 1991, in Spanish and in English, since many of the employees have a limited understanding of the English language.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[28]

ORDER

The Respondent, S&S/BE, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to timely notify and bargain with the Union as the exclusive collective-bargaining representative of its employees in the appropriate unit set out below with respect to the effects on those employees of its decision to cease operations and terminate their employment:

> All production and maintenance employees, shipping and receiving employees, warehousemen and truck driver employees employed at S&S/BE's facility located at 2911 Norton Avenue, Lynwood, California; excluding all other employees, office clerical employees, confidential employees, professional employees, guards and supervisors as defined in the Act.

(b) Failing and refusing to furnish the Union information necessary and relevant for the Union's performance of its statutory obligations to the unit employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Pay the terminated employees their normal wages for the period set forth in the remedy section of this decision.

(b) Furnish the Union the information set forth in the remedy section of this decision.

(c) On request, bargain in good faith with the Union concerning the effects on the unit employees of its decision to cease operations and terminate its union-represented employees;

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze and determine the amount of backpay due under the terms of this Order.

(e) Mail an exact copy of the attached notice marked ''Appendix''[29] to the Union and to all employees employed by S&S/BE in the unit on April 12, 1991. Copies of that notice, on forms provided by the Regional Director for Region 21, upon receipt thereof, shall be immediately signed by an authorized representative of S&S/BE and mailed upon receipt thereof, and shall be written in both Spanish and English.

(f) Notify the Regional Director in writing within 20 days from the date of this Order, what steps the Respondent has taken to comply.

[28] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[29] If this Order is enforced by a judgment of a United States Court of Appeals, the words in the noticed reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted pursuant to a judgment of the United States Court of Appeals enforcing an Order of the National Labor Relations Board.'' The mailed notices shall be written both in English and in Spanish.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board found we violated the National Labor Relations Act and ordered us to notify you we will comply with the following. You are therefore advised:

WE WILL NOT fail or refuse to give timely notice to and bargain with General Warehousemen Local 598, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL–CIO, the exclusive collective-bargaining representative of our employees in the unit set out below, with respect to the effects on those employees of our decision to cease operations and terminate their employment. The unit is:

> All production and maintenance employees, shipping and receiving employees, warehousemen and truck driver employees employed at our facility located at 2911 Norton Avenue, Lynwood, California; excluding all other employees, office clerical employees, confidential employees, professional employees, guards and supervisors as defined in the Act.

WE WILL NOT fail or refuse to furnish Local 598 with information necessary and relevant for performance of Local 598's duty under the Act to represent our unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights under Section 7 of the Act.

WE WILL, on request, bargain with Local 598 with regard to the effects on the unit employees of our decision to cease operations and terminate their employment.

WE WILL furnish Local 598 with information necessary and relevant for performance of its duty under the Act to represent our employees and requested by Local 598 following our cessation of operations and termination of our unit employees.

WE WILL pay to our unit employees who were terminated on April 12, 1991, when we ceased operations and terminated them, their normal wages for a period specified by the National Labor Relations Board, with interest on the sums due.

DANIEL I. BURK ENTERPRISES, INC., FORMERLY KNOWN AS SAMMONS & SONS